IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 702 OF 1992

R. R. Konka ..Petitioner

versus

Sadashiv L. Kanakdhar & Ors. ..Respondents

Mr. P. M. Shah for the Petitioner.

Mr. K. Y. Mandlik for the Respondents No.1.

Mr. S. K. Chinchalikar, AGP for the Respondents No.2 and 3 - State.

CORAM : D. G. DESHPANDE, J.

DATE : 18TH SEPTEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioner and the Respondents No.1 and learned AGP for the Respondents No. 2 and 3 - State.

2. The petitioner was granted licence for a country liquor shop. He by an application dated 10.12.1984 applied to the Superintendent of Prohibition and Excise, Solapur, for shifting his premises to City Survey No. 9/19 Murarji Peth,

Solapur. This application of the petitioner was allowed by the Authority by their letter dated 29.8.1985. In 1985 itself the petitioner shifted the shop to the new place. Against that order of 1985, the Respondent No.1 filed a Revision before the Secretary to the Government of Maharashtra, Home Department under Section 138 of the Bombay Prohibition Act, 1949, on 20.7.1989. This Revision was allowed by the State Government on 4.7.1991 and order of shifting of country liquor shop of the petitioner was cancelled. Against this order of the State Government, the petitioner has filed the present writ petition.

3. Advocate for the petitioner pointed out from the petition itself that before filing Revision to the State Government, the Respondent No.1 has filed a Civil Suit vide Civil Suit No. 912 of 1985 in the Court of the Civil Judge, Senior Division, Solapur, against the present petitioner praying that shifting licence issued to the petitioner was illegal, null and void. He has also prayed in that suit for permanent injunction against the petitioner from carrying on his business to the new shifted premises. The suit came to be dismissed after the

evidence was recorded. The Respondent No.1 then filed Appeal against the said Judgment and decree vide Appeal No. 580 of 1987. That Appeal was also dismissed and only thereafter the Respondent No.1 filed a Revision before the State Government.

4. Advocate for the Petitioner contended that in the Civil Court claim of the Respondent No.1 was rejected on merits after evidence was adduced by the parties and when he has lost in Appeal then the State Government should have refrained itself from entertaining the Revision. At any rate, should have rejected the Revision. He further contended that even though the distance between the two shops is required to be 200 meters, the distance was short by only 2.65 metres, and therefore also on merits there is no case for the Respondent No.1.

5. It is also brought to my notice that the Respondent No.1 has also filed Second Appeal and that was also dismissed. In view of these facts, entertaining the Revision after four years of permission to shift granted to the petitioner and allowing the Revision when the Respondent No.1 has lost in all the civil litigations, was totally

improper and uncalled for and therefore this petition is required to be allowed.

6. In the result, the petition is allowed in terms of prayer (a). Impugned order of the Secretary of the Government of Maharashtra dated 4.7.1991 is set aside. Rule made absolute accordingly. In the circumstances, however, no order as to costs.

(D.G. DESHPANDE, J.)